

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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**DATE:** March 27, 2003

**TO:** Orange County Zoning Administrator

**FROM:** Planning and Development Services Department/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA03-0005 for Variance

**PROPOSAL:** The applicants request approval of a rear yard setback variance to allow an existing second story balcony/walkway with the support posts setback five (5) feet from the rear property line.

**LOCATION:** The subject property is located in the community of Emerald Bay, inland of Pacific Coast Highway at 909 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Eberhard and MaryAnne Neutz, property owner

**STAFF** William V. Melton, Project Manager

**CONTACT:** Phone: (714) 834-2541 FAX: (714) 667-8344

**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA03-0005 for Variance subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject property is developed with a two story single-family dwelling. The lot is classified as a *shallow building site* because the average depth of the lot is 97.5 feet. Zoning Code Section 7-9-128.2 permits a reduced rear yard setback for lots less than 100 feet in depth. For this lot, the standard 25 feet rear setback requirement is reduced to 19.5 feet. County records indicate that a variance (V8836) was approved in 1976 to allow the dwelling to be constructed 10 feet from the rear property line. In 1984 a variance (VA84-38Z) was approved to allow a second story addition to be constructed 8 feet from the rear property line. In 2001, a small 4 feet wide second story balcony/walkway was constructed at the rear of the dwelling connecting to a deck on the side of the dwelling. The applicant indicated that the purpose of the deck was to provide a walkway to wash the second level windows.

In February 2001, the Code Enforcement Section received a telephone call regarding construction on the subject lot without permits. Code Enforcement staff went to the site in March 2001 and verified that construction was taking place and that no building permit had been issued for the new construction. The applicant was notified of the violation. In 2002, the applicant was in the process of submitting for a building permit when it was determined that the new construction projected further into the rear setback than was permitted by the Zoning Code and approval of a variance was required before a building permit could be issued.

**SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 “Single-family Residence” District with a CD “Coastal Development” District overlay, and developed with single-family dwellings (see photo below). Emerald Bay also has a certified Local Coastal Program (LCP). The LCP has a requirement that all properties on the ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. In general, property owners are required to obtain approval of a Coastal Development Permit prior to demolishing dwelling or making large additions to an existing residence and/or construction of a new dwelling. Properties located inland of Pacific Coast Highway, such as the subject site, are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit for new construction.

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to the Emerald Bay Community Association. The Emerald Bay Community Association has not yet taken any action on the project. During a staff visit to the site, the Chief Emerald Bay Building Inspector indicated that the Association did not want to make a decision on the project until the County takes an action. However, the Association has requested that the HOA approval be provided prior to the issuance of a building permit.

**CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

Even though two variances were previously approved allowing rear yard setbacks of 10 feet and 8 feet, the setback for any new construction not covered by these previously approved variances is 19.5 feet based on the shallow lot exceptions in the Zoning Code. The balcony/walkway was constructed with support posts located approximately 5 feet from the rear property line. Zoning Code Section 7-9-128-6 allows uncovered balconies and deck to encroach 5 feet into the rear setback area. Since the required setback for this lot is 19.5 feet, the balcony/walkway posts are required to be setback 14.5 feet from the rear property line, unless a variance is approved for a lesser setback distance.

It is true that the balcony/walkway was constructed without benefit of a building permit or variance approval. Because it was constructed without a building permit, it is not known if the structure was built to building code standards or if the structure is safe. It is not clear whether or not a second existing balcony/deck on the side of the property was constructed with a building permit. If the proposed structure does not conform to building code requirements for such a structure, then major reconstruction may be required. If reconstruction were required, the revised plans would need to be reviewed by planning staff.

Additionally, staff notes that according to the construction drawings submitted, the deck surface extends six inches beyond the support posts. This means that the deck is only 4 feet - 6 inches from the rear property line. This may violate the Emerald Bay development standards, which requires 5 feet setbacks from all property lines. Many variances are approved with findings using the Emerald Bay development standards as justification for the variance. Staff would not support a variance application that would violate Emerald Bay standards and perhaps nullify the variance justification. In the event this variance is approved, staff has included a Condition of Approval requiring that all components of the proposed balcony/walkway be setback a minimum of 5 feet from the rear property line.

One area of concern with second story rear yard decks is that of privacy on the adjoining neighbor to the rear. It appears that there is dense vegetation at the rear property line of the two adjoining lots, and the concern of privacy may not be an issue in this project. If staff receives information on a concern from a neighbor on the proposal after the preparation of this report, staff will present that concern to the Zoning Administrator at the public hearing.

Before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator cannot make these findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.

2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is not able to give its full support to this proposal, because of variance finding number 1 above. In that the typical special circumstance considered in many Emerald Bay variance applications is due to the differences between County and the association CCRs that restrict height limits of buildings. In this instance, the proposed balcony/walkway construction drawings provided in Exhibit 3 indicate a proposal that violates the association's strict 5 feet setback requirement, due to the shown 6-inch overhang. There is no hardship for this proposal regarding compliance with strict association building height limitation. Additionally, the existing variance for the second story setback of 8 feet seems to already provide special consideration for this site.

However, if the Zoning Administrator is able to make the required variance findings, then staff has included Findings and Conditions of Approval applicable to this project. The Zoning Administrator will need to determine the special circumstances required for variance finding number 7 in Appendix A.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. If the Zoning Administer is not able to make the two required variance finding, then Planning Application PA03-0005 should be denied.

**OR**

- c. If the Zoning Administrator is able to make the two required variance findings, then approve Planning Application PA03-0005 for Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

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**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

- 1. Applicant's letter of Explanation/Justification
- 2. Site Photos
- 3. Site Plans

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.